IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04/03/2004

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The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mr.Justice P.K.MISRA

Writ Petition No.7164 of 2001 and Writ Petition No. 7165 of 2001

M/s State Trading Corporation of India Ltd.,
No.7, Esplanade,
Chennai - 108 ... Petitioner

-Vs-

1. The Commercial Tax Officer,
Rattan Bazaar, Chennai.

2. The Tamilnadu Taxation Special Tribunal,
rep.by its Registrar,
Chennai -1. ... Respondents

The above writ petitions are filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari, as stated therein.

For Petitioner : Mr.K.Mani for
M/s Anitha Sumanth

For Respondent : Mr.T.Ayyasamy
Special Govt.Pleader

:COMMON ORDER

A.S.VENKATACHALAMOORTHY, J.
The petitioner is same in both the writ petitions, who seeks for issuance of writ of certiorari to call for the records of the second respondent in T.C.R.Nos.10 of 2000 and 1886 of 1997 dated 6th September, 2000 and quash the same. Since the issue involved in both the writ petitions is one and the same, the above writ petitions can be disposed of by this common order.
2. Briefly it is the case of the petitioner that it is a Public Sector Undertaking and registered under the Companies Act and a canalising Agency, appointed by the Government of India for the import of newsprint required by the News Paper Publishers. The Consumers of the newsprint apply to the Registrar of Newspapers of India, under the Ministry of

Information and Broadcasting for allocation of newsprint, specifying their requirements and the Registrar makes allocations of newsprint. On the basis of that the petitioner, who has a bulk licence, places the order for import of Russian newsprint on behalf of those consumers. The import is made strictly in accordance with the specification furnished by the Newspaper to the Registrar of Newspapers, who in turn makes the allocation, pursuant to which orders are placed on the foreign supplier for the import of newsprint. According to the petitioner, though the newsprint is imported against the bulk licence issued to the petitioner covering a large number of imports made on behalf of various newspapers, the imports are effected for and on bahelf of various newspapers and clearance is arranged under sublicence and the letter of authority. Though the foreign invoices and the bill of lading stood in the name of the petitioner, the name of Indian Express was mentioned indicating the specifications. In fact, the customs duty and other charges were paid only by the Customer viz., the Indian Express and the consignment was cleared by the Indian Express. According to the Petitioner, the transaction is a sale in the course of import and consequently not liable to tax. The petitioner also contended that soon after the receipt of the documents, the documents were transferred to Indian express even while the goods were on the highseas enabling Indian Express to clear the goods through Customs.

3. The stand of the respondents as can be culled out from the materials available on record is that the sales were not sales on the high seas and not eligible for exemption under Section 5(2) of the Central Sales Tax Act, 1956. The ship arrived on 11.6.1974 for the year 19 74-75 and the goods were handed over to the petitioner after receipt of cash payment on 19.7.1974. For the year 1975-76, the ship arrived on 6.4.1975 and the documents were handed over on 22.4.1975 and the goods were cleared by the buyer on 22.4.1995. The records available would clearly show that the sales were effected after the arrival of the ship, i.e, after the ship crossed the customs barrier for both the years 1974-75 and 1975-76 and the assessing authority rightly treated the sales as local sales after the import of the goods and hence the claim of exemption under Section 5(2) of the Central Sales Tax Act, 1956 was not available to them.

4. The assessing authority after examining the matter in detail, rejected the petitioner's contention that the sale is an import and subjected the transaction to tax as local sales within the State of Tamilnadu. The petitioner challenged the assessments in appeal contending that reopening of the assessment under Section 16 of the Tamilnadu General Sales Tax Act treating them as local sales is not correct. The Appellate Assistant Commissioner so also the Sales Tax Appellate Tribunal confirmed the assessment for both the years and dismissed the appeal. Aggrieved by the said order, petitioner filed revision before the second respondent herein. The second respondent after duly considering the entire matter held that the documents were transferred after crossing of the territorial water and there was no link between the actual user and the foreign seller, and the petitioner had raised the sales invoices after the vessel had berthed at Port of Madras for the purpose of collection of the value of the goods imported and hence the authorities have rightly held that there was local sales of the goods by the petitioner. The second respondent also pointed out that the authorities have rightly deleted the additions and penalty and has confirmed the tax on the actual sale value of the goods.

5. Before this Court, the learned counsel appearing for the petitioner reiterated the submissions already made by the petitioner before the second respondent. The learned counsel for the petitioner viz., the State Trading Corporation of India Limited, contended that it acted merely as an agent of the consumer, for the import of the goods and it was not a dealer in the goods and that what it collected was only the expenses incurred and nothing more. Secondly it is contended that soon after the receipt of the documents the same were transferred to the Indian Express even while the goods were on the highseas, enabling the Indian Express to clear the goods through Customs and it was only the Indian Express, which cleared the goods in its own name. The petitioner would also place reliance on the ruling reported in 1 29 STC 294 (State Trading Corporation of India Ltd. v. State of Tamil Nadu and another) and according to the learned counsel for the petitioner, the said decision would squarely apply to the facts of the present case and prayed for allowing the writ petitions.

6. The consumers of the newsprint apply to the Registrar of Newspaper of India, Ministry of Information and Broadcasting for allocation of newsprint mentioning their requirements and on that basis the Registrar makes the allocation. The petitioner, who is a bulk licencee, on the basis of the allocation made by the Registrar, places order for import of Russian newsprint. In the course of the argument, the learned counsel submitted that the petitioner is only a canalising agent and it charges only the actual amount of expenditure incurred by it and nothing more. In fact, there is nothing available on record to substantiate this argument. But on the other hand, we find in the affidavit filed in support of the writ petitions it has been stated that it is the Registrar, who intimates the price to the consumer. Also relevant to mention at this juncture that as pointed out by the second respondent, the authorities below have found that there was no commission payable to the petitioner by the actual users for the import of the newsprint. On the other hand, the sale invoices were raised by the revision petitioner and they were issued to the users only on payment of the price. Relevant also to point out that the goods were imported against petitioner's bulk licence and the bill of lading was also in the name of the writ petitioner. The actual user viz., the Indian Express was a total stranger to the foreign seller and the goods had moved the foreign land only on the order of the petitioner/ assessee, but later on raised the sale invoices in the name of the actual users and collected the money.

7. The next contention that has been put forward by the petitioner is that the documents were transferred to the Indian Express even while the goods were on the highseas, enabling the Indian Express to clear the goods through Customs.

8. Section 5(2) of the Central Sales Tax Act, 1956 reads as under,

"A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India."

Hence, if the petitioner has proved that if the title of the goods were transferred in the highseas, then it would be a case of sale made in the

course of import. But as far as the present case is concerned, the authorities below have found that the transfer of documents of title to the goods was not when the ships were in the highseas and the same was done only after the ship reached the Chennai Port. Hence it cannot be said that the sale took place in the course of the import of the goods.

9. The ruling relied on by the learned counsel viz., 129 STC 294 (cited supra) would not apply to the facts of the present case for the reason that in that case the assessment year in question was subsequent to 1976, i.e, after 1976 amendment, which reads as under,

"Sec.2(ab): 'Crossing customs frontiers of India' means crossing the limits of the area of a customs station in which imported goods or exported goods are ordinarily kept before clearance by customs authorities."

As could be seen from para 5 of the said Judgment, the only question required to be considered in that case was as to whether the sale effected by transfer of documents of title to the goods was made before or after the goods had crossed the customs frontiers of India. As a matter of fact, in that case, the goods were in the bonded warehouse. The Court ruled that taxable event occurs when the customs barrier is crossed and in the case of goods which are in the warehouse, the Customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

10. For the foregoing reasons, this court is of the view that there are no merits in the writ petitions and the same are dismissed. No costs.

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